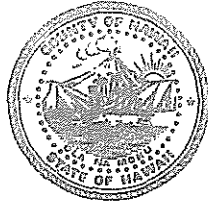


William P. Kenoī  
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## County of Hawai'i

### PLANNING DEPARTMENT

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May 11, 2010

Mr. Rell Woodward, Chairman  
Windward Planning Commission  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720

Dear Chairman Woodward and Commissioners:

**Subject: Bill 194 – Proposed Amendments to the Puna Community Development Plan  
Planning Director's Recommendations**

### Background

Bill 194 was introduced by the County Council to initiate amendments to the Puna Community Development Plan ("CDP"). The proposed amendments contained in Bill 194 are very similar to amendments that were proposed by Councilmember J. Yoshimoto, Councilmember Emily Naeole and former Planning Director, Chris Yuen in 2008. In 2008, the then existing county council made a decision to pass the Puna CDP without any amendments indicating that they would entertain amendments after passage.

Since passage of the Kona, South Kohala, North Kohala and Puna CDPs, this is the first bill to propose amendments. There has been some confusion over the process for reviewing and making recommendations on amendments, in part because CDPs are a relatively new planning tool for the County and this is the first time that the Department is processing interim amendments.

### The CDP Amendment Process

Section 15.1 of the 2005 Hawai'i County General Plan set out a process for establishing CDPs. Section 15.1 states that "[a]fter the steering committee has recommended approval of the Community Development Plan, it shall be forwarded to the either the Windward or Leeward Planning Commission, or both meeting as a joint commission as provided for in the Hawai'i

County Charter, for review and recommendation to the County Council. The County Council may modify or amend the Community Development Plan before enacting it by ordinance, but it shall give the steering committee and the designated Planning Commission, or joint commission, as the case may be, an opportunity to review and comment on substantive amendments and modifications before final adoption of the plan.” No specific time frame for initiation or completion of either CDPs or interim amendments is provided in Section 15.1.

The County Council provided for a comprehensive review of any adopted CDPs in Section 16-2 of the Hawai‘i County Code. This section provides that comprehensive reviews “shall commence within ten years from the date of adoption.” No specific provision regarding process is made for interim amendments to CDPs in Chapter 16 of the Hawai‘i County Code or in the General Plan.

However, Chapter 2, Section 2-28.1 of the Hawai‘i County Code, provides that “within 60 days after receipt of the planning director’s recommendation on a draft community development plan or any amendment thereof”, either the windward or leeward planning commission, or both meeting as a joint commission as provided for in the Charter, shall transmit the draft community development plan or any amendment with its recommendation through the mayor to the County council.” While this section provides a timeline for Planning Commission action, no timeline is given for how long the Action Committee may take for its review and recommendation.

In the absence of specific provisions regarding Action Committee review and consistent with the timelines envisioned for Planning Commission review and recommendation of amendments, the Planning Director made a request to the County Council to ask for additional time beyond 60 days to review and make recommendations to the Planning Director. The Council denied this request, so the Action Committee had 60 days from receipt of the proposed amendments to make its recommendations.

### **Substantive Amendments**

There is no specific provision that addresses substantive amendments to interim CDP amendments that are initiated by the County Council. Interim amendments to the General Plan that are initiated by the County Council are governed by Section 16.2 of the General Plan. This section provides that the Planning Director shall have 60 days or a longer period, as may be agreed to by the County Council to submit recommendations to the Planning Commission on the interim amendments for its review and recommendation. The Planning Director’s recommendation may include suggested changes **consistent with the general intent of the proposed amendment\***. There is no authority for either the Director or the Action Committee to recommend changes that are inconsistent with the general intent of the proposed amendments. In the absence of language specifically addressing CDP interim amendments, the language governing General Plan amendments controls the process as the CDP is subordinate to and a part of the General Plan.

\* (emphasis added)

Guidance as to what is considered a suggested change that is consistent with the proposed amendment can be found in the provisions governing interim amendments to the General Plan. Pursuant to Section 16.2 a change to a proposed amendment which substantially changes the general intent or subject matter of the proposed amendment, such as newly adding or deleting a goal, policy or course of action, or standard, or a map amendment which changes a land use designation of a parcel, shall be considered an entirely new proposed amendment and submitted to the Planning Director and the appropriate planning commission for their review and recommendation. This would require a separate proposed bill/ordinance for approval by the respective bodies.

#### **PLANNING DIRECTOR'S RECOMMENDATIONS ON BILL 194**

By letter dated April 16, 2010, the Planning Director received the recommendations of the Puna CDP Action Committee. The Director agrees in part and disagrees in part with the recommendations and has some minor additional recommendations for changes. In order to correspond and correlate these recommendations with those of the Action Committee, I will address them in the same order as the April 16<sup>th</sup> letter.

**No. 1. Replacing words such as "initiate" with "propose" or "amend" with "propose amendments".**

The Planning Director supports the proposed amendments as initiated by the County Council.

Rationale: Bill 194 proposal to amend action words such as "Initiate" with "Propose" and "Amend" with "Propose amendments". Similarly words such as "Establish" are proposed to be amended with "Propose the establishment". The Action Committee seems to believe that these words "support the Planning Director's responsibility to implement." However, the Committee fails to recognize that all the Director can do is propose amendments to the zoning code and it is the County Council that has the actual authority to enact amendments or rezone property. Even though enacted by ordinance, a current County Council cannot through an ordinance require future County Councils or state agencies to vote or enact regulations a particular way.

**No. 2. Deleting establishment of a County historic preservation committee in Section 2.1.3 Actions (page 2-5) and accordingly renumber the remaining sections.**

The Planning Director supports the deletion of the relevant sections as initiated by the County Council. (Amendment originally proposed by Councilwoman Emily Naeole in 2008)

Rationale: Ordinance 08-42 was adopted on April 11, 2008 and establishes a Hawai'i County Cultural Resources Commission that provides for the goals and objectives of this action item.

**No. 3. Amendment to the section regarding Wastewater Disposal/Treatment Systems in Section 2.3.3.d.**

The Planning Director supports the proposed amendment as initiated by the County Council. (Originally proposed by Planning Director Chris Yuen in 2008)

Rationale: The current action item calls for a centralized sewage treatment plant and/or self-contained pumped septic systems for any development within a two (2) mile-wide corridor between the Wao Kele O Puna forest preserve and the ocean. This would impact the existing Department of Hawaiian Home Lands (DHHL) Maku'u Farm Lots of approximately 868 acres, containing 127 five-acre agricultural lots immediately makai of Highway 130, the proposed 640-acre DHHL Maku'u residential subdivision planned for a total of about 758 lots mostly 20,000 square feet or less in size immediately mauka of Highway 130, the DHHL Maku'u Makai parcels consisting of approximately 500 acres primarily mauka of Beach Road and SE of Hawaiian Paradise Park, and the DHHL 100-acre Keonepoko Nui parcel makai of Highway 130. This restriction would also impact the State's Keonepoko Farm Lots north of Kahakai Boulevard. This proposal in the CDP would significantly increase the cost of building a home in these areas because the owner could not use a cesspool or a typical septic system, which has a holding tank and a leach field. The owner would need some type of self-contained mini treatment plant. It is very unlikely that a centralized wastewater treatment system will be developed in this area, and this type of system is also very costly.

The necessity of such requirements to protect drinking water is questionable. Current Department of Health (DOH) rules do not allow new cesspools and septic systems within a 1000' radius of wells used for public drinking water. Department of Water Supply (DWS) has several wells, however, dating from before these DOH rules, which are surrounded by homes on cesspools, such as a well near Gilbert Carvalho Park in Hilo. The water in these wells is regularly tested and has not shown any microbial contamination.

It is possible to create a similar aquifer protection area that would protect the source of water for the current DWS wells between the 'Ainaloa subdivision and Pāhoa, and more wells that might be drilled in this general area, without causing problems for homebuilders on DHHL land. The DWS wells are located just mauka of Highway 130. Immediately mauka of these wells is a 5,127-acre State parcel that is part of the Puna Forest Reserve, and Wao Kele O Puna, owned by Office of Hawaiian Affairs. Under current plans, both would remain as natural areas.

**No. 4. Amendment regarding Village/Town Center Formation, Zoning & Design Criteria**

The Planning Director supports the proposed amendments which delete references to floating zones and transferred development rights as initiated by the County Council. (Originally proposed by Planning Director Chris Yuen in 2008)

Rationale: See No. 9 below.

**No. 5. Regarding Downsizing of Agricultural Lands section 3.2.2.k and 3.2.3 b.**

The Planning Director supports the proposed amendments as initiated by the County Council.

Rationale for 3.2.2 k (Originally proposed by Councilwoman Emily Naeole in 2008): This proposed amendment would allow for community land trust(s) to be formed that would manage public lands for farming activities, such as community gardens. It also provides a financial incentive for farmers who put fallow agricultural lands back into production. The CDP also has many other actions that protect agricultural lands without requiring purchase or lease of lands by the County.

Rationale for Section 3.2.2.b (Originally proposed by Planning Director Chris Yuen in 2008): The proposal in the Puna CDP would be too restrictive on property owners. For example, the owner of a 49-acre property would be limited to creating one additional lot and the owner of a parcel of less than five acres could not subdivide at all. This would make it impossible in many cases for subdivisions to allow conveyances to family members, which may be the hope and expectation of many property owners.

The Planning Director finds that the Action Committee's recommendation to replace original text in Section 3.2.3.b with new language is substantively different from the amendment as proposed by the County Council and therefore cannot be amended through the existing bill. The Director also does not support the proposed amendment and does not plan to initiate one.

**No. 6. Relocation of Kea'au and Pāhoā Transfer Stations: Section 3.4.3.g Delete Action Item "g" and accordingly renumber the remaining action items**

The Planning Director supports the deletion of section "g" as initiated by the County Council. (Originally proposed in 2008 by Councilwoman Emily Naeole).

Rationale: The Steering Committee voted to include an action item to relocate the Kea'au and Pāhoā transfer stations to sites that would better serve the major population areas. Some suggestions were offered during the Steering Committee deliberations for alternate relocation

sites. However, these alternatives were not included in the Draft CDP since it was recognized that relocation would require an environmental study in which alternative sites would be considered.

The Pāhoā transfer station is not as conveniently located to the major population centers in the Pāhoā area as it might be, and its current location does expose some residential areas of Pāhoā Town to traffic and other hazards that are not particularly desirable or compatible with a residential neighborhood.

However, in view of the cost of the current upgrade to the Pāhoā transfer station by the Department of Environmental Management, relocation within the next ten years does not appear to be warranted.

The Kea‘au transfer station’s present location is adequate for the major population areas it is intended to serve. It is conveniently accessible to residents from ‘Āinaloa to Hawaiian Paradise Park commuting to Kea‘au and Hilo. It is also relatively close to Kea‘au Village, yet sufficiently detached from existing residential and commercial uses. However, access and egress to and from the Kea‘au transfer station is likely to become problematic when the State makes the planned shoulder lane improvements to Hwy 130 and eventually the Hwy 130 widening project is constructed. These access and egress issues for the Kea‘au transfer station, as well as for neighboring properties such as the Humane Society, may be adequately addressed with appropriate intersection improvements at Opukahaia St.

#### **No. 7. Parks and Recreation**

The Planning Director supports the proposed amendment as initiated by the County Council instead of the language proposed by the Action Committee.

The Director has concerns over this section as it pre-supposes the feasibility of the conversion of the old Pāhoā Fire Station.

**No. 8. Section 4.4.3.a. Action Committee recommendation to include the word “roundabout” in a list of traffic calming features but delete the addition of “highway widening”.**

The Planning Director supports the Action Committee’s recommendation and does not believe that it is a substantive amendment, so it can be included. However, the Director also agrees with the Council proposal to add “highway widening” to this section. Therefore, the Director believes the section should read:

“Conduct a study to determine the most efficacious way to create greater highway safety for all travel modes, including a cost benefit analysis for each studied method, and consideration of a wide range of traffic calming features (including roundabouts), highway widening, the use of frontage roads, and various types of intersection controls; and”

**No. 9. Proposed amendment to Section 5.2.1 Zoning Designations, Section 5.2.2 and Section 5.2.3**

The Planning Director supports the proposed amendments as initiated by the County Council. (Originally proposed by Planning Director Chris Yuen in 2008)

Rationale: The process for making the necessary land use changes for the village and regional centers caused some concern. Most of these areas are currently in the state land use agricultural district and are in county agricultural zoning. To become a village or regional center, these sites would need an amendment to the General Plan LUPAG map (except when they are currently consistent with the LUPAG), a state land use boundary amendment to urban, which can be done by the county council for areas of 15 acres or less, and county rezoning. The CDP does not rezone land in itself; it is a guide to future zoning. The Puna CDP proposes a “floating zone” concept, which creates additional questions because this concept currently does not exist in the zoning code, and an optional “purchase of development rights” procedure, which also does not exist in the zoning code. In order to simplify the process, the Planning Director proposes eliminating the references to “floating zone” and purchase or transfer of development rights.

**Table 5.1 Village/Town Center Formation, Zoning & Design Criteria – deletion of some sections, addition of new language.**

The Planning Director supports the proposed changes to Table 5.1 as initiated by the County Council. (Originally proposed by Planning Director Chris Yuen in 2008)

Rationale: Concerns were also expressed over Table 5-1, which gives “General Use and Design Criteria” for the various types of commercial centers. Specifically, there was an objection to the reference to a maximum of 250,000 square feet of commercial area for a regional town center, the limits on size of tenant spaces, including 50,000 square feet as the maximum in a regional town center, and the reference to “vernacular architecture.” After further review, the Planning Director recommends eliminating these provisions. The ultimate extent of commercial development within a regional town center should be limited by market forces. Limits on the size of individual tenants, if desired, can be left to the master plan for a regional center for areas not currently zoned. There should not be a blanket restriction on large stores in regional centers. The consumer can make this decision, or, if desired by the Council, it can be imposed at the time of rezoning. “Vernacular architecture” is too vague a concept to provide guidance for a

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developer or a basis for regulations, and again, for a town or village center, the master plan should specify design guidelines.

**Action Committee recommendation to retain the word "Preliminary" in the village center boundaries.**

The Planning Director does not support the amendment initiated by the County Council to delete the word "Preliminary". The Director supports retention of this word as recommended by the Puna CDP Action Committee

**No. 10. Addition of new Section 5.2.4 regarding industrial zoning as initiated by the County Council. (Originally proposed by Planning Director Chris Yuen in 2008)**

The Planning Director supports the proposed amendment as initiated by the County Council.

**No. 11. All other amendments.**

The Planning Director supports all other amendments proposed in Bill 194 as initiated by the County Council.

#### **OTHER ITEMS IN RECOMMENDATION LETTER FROM THE PUNA CDP ACTION COMMITTEE**

**Additional non-substantive & formatting amendments in Exhibit A.**

The Planning Director supports the approval of these amendments as recommended by the Puna CDP Action Committee.

**The amendment proposed by Friends of Puna's Future regarding a new action item for creation of Village/Town Center Steering Committees**

As this is a substantive amendment that is not within the general substance of the proposed amendments contained within Bill 194, this will require initiation by either the Planning Director or the County Council of a new bill for an amendment.

The Planning Director does not support this proposal and does not plan to initiate an interim amendment.



Rationale: Any such committee created through adoption of the Puna CDP by ordinance come under the definition of a "board" under Chapter 92 of the Hawaii Revised Statutes. Therefore, such committees would be required to post notice pursuant to Section 92-7 and comply with the six day notice requirement. The committee and Department would be required to keep written minutes of all meetings and such minutes would become public records and must be available within thirty days after each meeting. All the requirements of Chapter 92 would apply to such a committee.

The Planning Department does not have the financial resources or the requisite manpower to support additional committees in addition to its existing boards and commissions for which the department is responsible. The department currently provides manpower and financial support for the Leeward Planning Commission, the Windward Planning Commission, the Kailua Village Design Commission, the Arborist Committee, the Board of Appeals, the Kona Action Committee, the North Kohala Action Committee, the South Kohala Action Committee, the Puna Action Committee, the Ka'ū Steering Committee, the soon to be established Hāmākua Steering Committee, and the Downtown Hilo Visionkeepers. When the Cultural Resources Commission is established, the department will also have to provide support to that commission.

Additionally, the department is required to participate in state Land Use Commission hearings that involve proposed land use reclassifications of any land within the County, in addition to County Council committee and council meetings. The department also participates or is a member of various county and state committees, such as the Department of Transportation (DOT) Complete Streets Task Force, DOT-Highway 130 Improvement Project Advisory Group, DOT-Statewide Bicycle Master Plan, DOT-Statewide Pedestrian Master Plan, DOT-Statewide Transportation Advisory Committee, DOT- Sub Statewide Transportation Advisory Committee, Ocean Resources Management Plan (ORMP) Working Group, ORMP Policy Group, Marine and Coastal Zone Advocacy Council and frequently is called upon to appear at the meetings of various community groups.

Current budget cuts will eliminate funding for community planning assistants and recorders for the action committees which will add to the workload of our existing planners. No other department in the County has to provide support and manpower to this many boards, commissions and committees while servicing multiple members of the public on a daily basis. Until such time that additional resources can be allocated it is not feasible to create additional committees that the Department must support.

**Amendment proposed by Hawaiian Shores Community Association**

The Planning Director supports the proposed amendment. However as it is a substantive amendment, the Director will draft and initiate a separate amendment for submission to the Planning Commission and Council.

**Amendment proposed by Kalapana Seaview Estates Community Association**

The Planning Director supports the proposed amendment. However, as it is a substantive amendment, the Director will draft and initiate a separate amendment for submission to the Planning Commission and Council.

**Amendments proposed by Hawaiian Paradise Parks Homeowners Association**

The Planning Director supports the recommendation of the Action Committee that the existing language be retained. Therefore, the Director will not initiate an interim amendment.

**Amendments proposed by All Landowners of Hawaiian Acres (ALOHA)**

The Planning Director supports the Action Committee's recommended amendments. As these are substantive amendments, the Director will draft and initiate a separate amendment for submission to the Planning Commission and the Council.

**Amendment proposed by Foster Kern, LLC**

The Planning Director supports the Action Committee's recommendation to reject the request. Therefore, the Director will not be initiating an interim amendment.

**Amendment proposed by Toby Hazel to expand Hele-on Bus Service**

The Planning Director agrees in concept with expansion of mass transit service. Therefore, the Director will draft a similar amendment for submission to the Planning Commission and the Council.

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**ADDITIONAL NON-SUBSTANTIVE AMENDMENTS PROPOSED BY THE  
DIRECTOR**

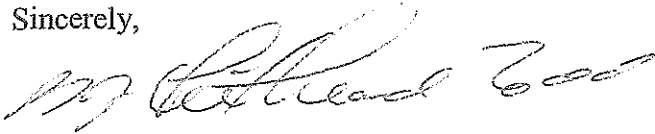
Page 1-1, the words 'Ōhi'a, Hapu'u, Pueo, 'Amakihi, and 'Apapane should not be capitalized.

Page 1-1, paragraph 5, third sentence, the word "Maka'aina" should be spelled "Maka'āinana" as that is the proper word for "commoner".

Page 2-1, "Malama Ki" should be "Malama Kī".

The County Council should also consider whether the word "'ōhi'a" should be changed to "'ōhi'a-lehua" to reference the tree that bears lehua blossoms as opposed to the other meanings of "'ōhi'a" which include the mountain apple, a tomato, a native variety of sugar cane, and a variety of taro among other meanings.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

BJLT:rl

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- Attachments: 1. Bill No. 194  
2. Planning Committee Communication No. 664  
3. Puna CDP Action Committee Recommendation Letter